

FETAPA MOTULIKI v. LOFIA MOTULIKI.

(Civil Appeal : Higginson J. Nuku'alofa, 1st May, 1951)

Husband and Wife — Maintenance Order — Desertion — Proof of Marriage — Proof of Husband's means — Just cause for leaving.

This was an appeal by the husband from the decision of the Magistrate ordering that the husband provide maintenance for the wife. The evidence showed that the parties had a quarrel and the husband struck his wife and ordered her to leave the home which she did. Both the Plaintiff and the Defendant gave sworn evidence that they were husband and wife but the marriage was not formally proved. There was no evidence whatever as to the husband's means except that he had no tax allotment.

No evidence was called for the defendant, his counsel submitted that the case must be dismissed as the evidence showed that the Plaintiff had committed adultery. The Magistrate refused to dismiss the case and made an order.

The defendant appealed.

HELD. Appeal allowed.

Finau appeared for the Appellant (Defendant).

Tu'akoi appeared for the Respondent (Plaintiff).

HIGGINSON. J. This appeal is grounded on adultery. There are good grounds to believe that there was adultery. But there are also other reasons why the appeal must be allowed :

- (1) The marriage though admitted by implication has never been properly proved.
- (2) Before an order can be made it must be proved that the defendant has the means to comply with the order. No attempt has been made to prove this.
- (3) Only one assault and ordering out has been proved. It was decided long ago that one such assault and ordering out is not grounds for a claim for desertion. (Halsbury's Laws of England 1st Edn. Vol. 16 page 597 note (e)).

Therefore the Appeal is allowed and the judgment of the Lower Court is set aside with costs (assessed at £2/6/-).